

The Office referred appellant, together with a statement of accepted facts, to Dr. Richard B. Dawson, a Board-certified otolaryngologist, for a second opinion evaluation regarding the nature, extent and relationship of his hearing loss to his federal employment. In a March 19, 2009 report, Dr. Dawson diagnosed bilateral high-frequency sensorineural hearing loss, which he opined was due to appellant's noise exposure in the course of his federal employment. After reviewing the results of a March 16, 2009 audiogram, he stated that appellant's hearing loss was in excess of what would normally be predicted on the basis of presbycusis. Dr. Dawson advised that the occupational noise levels were of sufficient intensity and duration to have caused the hearing loss. Noting that the speech reception threshold in the right ear was 25 decibels, he recommended the use of a hearing aid in the right ear. Dr. Dawson attached a copy of the March 16, 2009 audiogram.¹

On April 21, 2009 the district medical adviser reviewed Dr. Dawson's March 19, 2009 report and audiologic testing performed on appellant. Applying the Office's standardized procedures to this evaluation, he determined that appellant did not have a ratable hearing loss under the relevant standards of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*. Decibel losses for the left ear were totaled at 70, and divided by four, to obtain the average hearing loss per cycle of 18. The 18 average was then reduced by the 25 decibel fence to equal 0 decibels, resulting in a zero percent loss. Decibel losses for the right ear were totaled at 95, and divided by four, to obtain the average hearing loss per cycle of 24. The 24 average was then reduced by the 25 decibel fence to equal 0 decibels, resulting in a zero percent loss. The medical adviser diagnosed noise-induced binaural hearing loss and recommended the authorization of a hearing aid for the right ear.

In a decision dated April 27, 2009, the Office accepted appellant's claim for binaural hearing loss, due to his employment-related hearing exposure, and authorized a hearing aid for the right ear. It determined that the extent of appellant's hearing loss was not ratable and he was not entitled to schedule award.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act² and its implementing regulations³ set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss, or loss of use, of scheduled members or functions of the body. However, the Act does not specify the manner in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. The A.M.A., *Guides* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.⁴

¹ Testing for the left ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second (cps) revealed decibel losses of 15, 20, 10 and 25 respectively; testing for the right ear at those frequency levels revealed decibel losses of 25, 25, 15 and 30 respectively.

² 5 U.S.C. § 8107.

³ 20 C.F.R. § 10.404.

⁴ *Id.*

The Office evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides*.⁵ Using the frequencies of 500, 1,000, 2,000 and 3,000 cps, the losses at each frequency are added up and averaged.⁶ Then, the fence of 25 decibels is deducted. The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.⁷ The binaural loss is determined by calculating the loss in each ear using the formula for monaural loss; the lesser loss is multiplied by five, then added to the greater loss, and the total is divided by six to arrive at the amount of the binaural hearing loss.⁸ The Board has concurred in the Office's adoption of this standard for evaluating hearing loss.⁹

ANALYSIS

The Board finds that the evidence of record does not establish that appellant sustained a ratable hearing loss.¹⁰

On April 21, 2009 the district medical adviser reviewed Dr. Dawson's March 19, 2009 report and the audiologic testing performed on appellant. He properly applied the Office's standardized procedures to this evaluation. Testing for the left ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cps revealed decibel losses of 15, 20, 10 and 25 respectively. These decibel losses were totaled at 70 decibels and were divided by 4 to obtain the average hearing loss of 18 decibels. This average loss was then reduced by 25 decibels (25 decibels being discounted as discussed above) to equal a negative figure. Testing for the right ear revealed decibel losses of 25, 25, 15 and 30 respectively. These decibel losses were totaled at 95 decibels and were divided by 4 to obtain the average hearing loss of 24 decibels. This average loss was then reduced by 25 decibels, resulting in a negative figure. This 25 decibel fence is applicable to all claims and is subtracted from the average loss to each ear. In rating hearing loss, the fence is subtracted as it has been shown that the ability to hear everyday sounds under general listening conditions is not impaired.¹¹ The district medical adviser properly concluded that appellant did not have a ratable hearing loss under the relevant standards of the A.M.A., *Guides*.¹²

⁵ Federal (FECA) Procedure Manual, Part 3 -- Schedule Awards, *Special Determinations*, Chapter 2.0700.4.b (January 2010).

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ See *Donald Stockstad*, 53 ECAB 301 (2002), *petition for recon. granted (modifying prior decision)*, Docket No. 01-1570 (issued August 13, 2002).

¹⁰ Appellant submitted audiograms for the period August 7, 1985 through June 1, 2005. This evidence did not meet the Office's criteria to establish an employment-related loss of hearing, as they were not certified by a physician as being accurate. The Office does not have to review every uncertified audiogram, which has not been prepared in connection with an examination by a medical specialist. *Robert E. Cullison*, 55 ECAB 570 (2004).

¹¹ See *L.S.*, 57 ECAB (2005).

¹² Office procedures provide that percentages should not be rounded until the final percent for award purposes is obtained. Federal (FECA) Procedure Manual, *supra* note 5. The Board notes that, although the Office rounded percentages prior to the final percent, this application produced the same result as if the rounding had occurred when the final percent was obtained. Therefore, the error was harmless.

On appeal, appellant contends that he is entitled to a schedule award because he sustained a measurable hearing loss. He also asserts that his employer failed to keep a proper record of his hearing tests over the course of his employment. The Board notes that the Office properly relied on a comparison of prior audiograms to the most recent audiogram of March 16, 2009 in determining the extent of appellant's hearing loss. The district medical adviser properly computed the percentage of appellant's hearing loss based on the formula contained in the A.M.A., *Guides*. There is no provision for granting a schedule award in the absence of a measurable hearing loss after deducting the 25 decibel fence.

CONCLUSION

The Board finds that appellant has failed to establish that he sustained a ratable hearing loss entitling him to a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the April 27, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 12, 2010
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board